

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,840

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a sixty-year-old man with a high school education. He has been diagnosed as having severe chronic obstructive pulmonary disease (COPD). Despite his medical condition, however, the petitioner has been employed for the last three years as a town building maintenance custodian. Currently, he works between 18 and 20 hours a week at \$8.60/hour, with no benefits.

Although the petitioner maintains that he does his work slowly and with great difficulty, there is no evidence either that he does not satisfactorily meet the expectations of his employer or that his employer has made any special accommodations for the petitioner's handicap.

The medical evidence supports a finding that the petitioner is severely limited in terms of exertion and stamina, and it appears that he is working despite a physical impairment that would ordinarily preclude such activity. There is no question, however, that the petitioner is presently engaging in substantial gainful activity as defined by the pertinent regulations (see below).

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Under the regulations work is presumed to be substantial gainful activity if it is performed without special accommodations from one's employer and if it pays in excess of \$500 a month. 20 C.F.R. § 416.974. As noted above, the petitioner's present employment meets both of these criteria.

Unfortunately for the petitioner, the regulations also provide that if an individual is presently engaging in substantial gainful activity he cannot be considered disabled--despite any medical impairment he might have, and regardless of his age, education, and work experience. 20 C.F.R. § 416.920(b). At the hearing, the petitioner was advised that if he loses his present job, his hours are cut back, or even if he quits, he should reapply for medicaid. Inasmuch as the Department's decision at this time, however, is in accord with the pertinent regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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